



**REPUBLIC OF KENYA**

**High Court at Nyeri**

**Succession Cause 31 of 1993**

**SAMUEL GACHINGIRI WANJAU ..... DECEASED**

**AND**

**FRANCIS WANJAU GICHINGIRI**

**ROBERT WACHIRI GICHINGIRI.....PETITIONERS**

**RULING**

1. The application before the court is brought under rule 44(1) of the Probate and administration Rules being summons for revocation or annulment of grant.
2. It is based on the ground that the proceedings to obtain the grant were defective in substance and nature and therefore unlawful that the grant was obtained fraudulently by making of a false statement or by the fraudulent concealment from court of material facts of the case. That the grant was obtained by means of untrue allegations of a fact material in point of law to justify the grant.
3. It is supported by the affidavit of Jane Wangai Githinji in which she deponed that the deceased was her biological father and therefore entitled to the estate as a daughter.
4. That she was never a party to the succession and that the cause was filed without an introductory letter from the Chief and that the proceedings were concluded secretly by her brothers.
5. The application is opposed by the respondents through affidavit of Francis Wanjau Gachingiri in which he deponed that the deceased left four (4) children surviving him and only two of them were depending on him the daughters having been married and were living with their husbands.
6. That when the applicant returned to her parents home after the death of her husband her mother in law came for her and gave her land where she put up a semi-permanent house and that the alleged protester did not cause any injustice to the applicant because she was not a defendant of the deceased.
7. Directions were given in this matter that the same be heard by way of affidavit evidence and written submissions which have been filed.
8. It was submitted on behalf of the applicant that being a daughter of the deceased was not catered for neither was she notified of the filing of the proceedings herein either by way of citation or being required to sign the requisite consent or renunciation .
9. The applicant was never served with notice of the application for confirmation as required and that the petitioners by their affidavit sworn on 4/11/2011 confirmed that the applicant was not

notified.

10. On behalf of the respondent it was submitted that the estate is wholly distributed and there is no grant to be revoked and that the application has been filed as an afterthought.

11. That the issue is not omission of her name in the petition form but whether she has suffered any loss by that fact and that she was not entitled to the estate because she was adequately provided for elsewhere.

12. That the applicant has not given any reason why she did not come up to file her objection when the matter was pending in court from 1993 to 2004 and that part of the estate has been sold to a third party.

13. The following issues are undisputed in this matter.

- a. the applicant is a daughter of the deceased.
- b. the applicant was not named as a survivor of the deceased in the application for grant.
- c. the applicant was not notified during the confirmation of grant
- d. the applicant has not been provided for.

14. Having considered the affidavit evidence herein I find that the respondent/petitioner made a false statement when he stated that the deceased was only survived by two leaving out the applicant.

15. Section 29 gives meaning of dependant as follows:

a. wife or wives or former wife or wives and children of the deceased whether or not maintained by the deceased immediately prior to his death.

16. That whether married or not and whether being maintained by the deceased at the time of his death the applicant was a dependant by virtue of the above provisions of the law.

17. In law there is no limited time set within which grants whether confirmed or not or whether distributed or not can be revoked .

18. The issue of the applicant having been provided for by her mother in law is not material to this cause since it does not form part of the net of the estate of the deceased herein.

19. I therefore find merit in her application herein and therefore revoke the grant of letters of administration issued to the respondent herein with no order as to cost.

Dated and delivered at Nyeri This 31st January 2013.

**J. WAKAIGA**

**JUDGE**

Mr. Wachira for the Respondent

N/A by Karweru for the applicant

Read in open court in the presence of Mr. Wachira.

**J. WAKIAGA**

**JUDGE**